

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of)
Kershman et al) PTO Attorney: Paul Shanoski
Serial No: 09/912,219) Attorney Docket: SK-3
Filed: July 25, 2001)
Patent No. 6,858,241)
Issue Date: February 22, 2005)
For: FARINACEOUS SURFACE PRODUCT THAT IS)
TOASTER REHEATABLE AND METHOD _____)

RENEWED PETITION PURSUANT TO 37 C.F.R. §1.378(e)

Mail Stop Petition
Commissioner of Patents
Attn: Paul Shanoski
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Petitioner hereby requests reconsideration of the Decision on Petition dated (mailed) **September 14, 2009** in which the Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)), filed on **July 27, 2009** for the subject patent, was dismissed. In the Decision, it was pointed out that "**the record does not contain a showing that Petitioner had steps in place to ensure the timely submission of the maintenance fee**". Petitioner submits herewith a Supplemental Statement in support of the Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)). The combination of the statement previously submitted with the Petition filed on **July 7, 2009** and the Supplemental Statement filed herewith shows that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The Supplemental Statement enumerates the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Included herewith is the credit card payment of \$400 to cover the Petition Fee set forth in 37 CFR 1.17(f).

Applicants hereby authorize the Commissioner to charge Deposit Account **19-1685** (Order # **SK-3**) any additional charges due for the submission and acceptance of this petition.

If any further information is required for this Petition, please contact Jay R Beyer at 303) 499-3859.

Respectfully submitted,
/Jay R Beyer/
Jay R Beyer
Petitioner
Reg. No. 39,907

SUPPLEMENTAL STATEMENT IN SUPPORT OF RENEWED PETITION PURSUANT TO
37 C.F.R. §1.378(e)

The Issue Notice for the subject patent number 6,858,241 was mailed from the Patent Office on February 2, 2005. As is my normal practice, I docketed the receipt of the issue notice and mailed a copy of the Issue Notice to the Patentees on February 8, 2005. As part of this process, I docketed the patent number, the scheduled issue date, and the due dates for the maintenance fees associated with this new patent. In this case, the first maintenance fee was docketed as being due by August 22, 2008, the second maintenance fee being due by August 22, 2012, and the third maintenance fee being due by August 22, 2016.

The subject patent issued on February 22, 2005 and, upon receiving the Ribbon Copy of the patent and as is my normal practice, I forwarded the Ribbon Copy of the patent to the Patentees on February 28, 2005. As is also my normal practice, I confirmed that the patent number, issue date and due dates for the maintenance fees were properly docketed.

As is also my normal practice, in late July of 2008, I compiled a listing of due dates from our docketing system for tasks that needed to be completed in August of 2008. One of the action items on this list was that the first maintenance fee for the subject patent was due by August 22, 2008 and it was determined that the Patent Office listed this patent as a large entity. As is my normal practice, I contacted the Patentees in early August 2008 to inquire if they wanted me to pay the maintenance fee, and if so, did they now qualify for small entity status. Through a series of correspondence with the Patentees, it was determined that they did now qualify for small entity, but they were discussing a potential licensing agreement that may change their qualification for small entity status. Based on this, I was instructed not to pay the maintenance fee, but instead, I was instructed to docket contacting the Patentees in several months at which time they would make a final decision regarding 1) paying the maintenance fee plus the surcharge that would then be due and 2) whether or not they would qualify for small entity status.

Based on the above described docketing system, I contacted the Patentees on January 2, 2009 to find out if they had made a decision regarding paying the first maintenance fee for the subject patent along with the required surcharge. I also inquired about whether or not they properly qualified for small entity status. On the same day, the Patentees instructed me to proceed with paying the maintenance fee plus surcharge by the due date of February 22, 2009.

On February 17, 2009 I submitted the first maintenance fee, the required surcharge, and a small entity assertion for the subject patent. Copies of these documents were provided with the Petition submitted July 27, 2009. The maintenance fee and surcharge were submitted with a Maintenance Fee Transmittal Form PTO/SB/45 that was approved by the PTO for use through 04/30/09 and I submitted the documents to the address that was preprinted on the approved PTO form. Unfortunately, the address for submitting

maintenance fees had been changed, and the documents were returned to sender. A copy of the envelope stamped "return to sender" was also provided with the Petition submitted July 27, 2009. Although I do not have a dated document to confirm this, I believe that I received the envelope that was stamped return to sender on March 2, 2009. As described in the Petition submitted July 27, 2009 and as acknowledged in the Decision on Petition dated September 14, 2009, I submitted a Petition to Accept Delayed Payment of Maintenance Fee under 37 CFR 1.378 on May 3, 2009, a copy of which was previously submitted with the Petition filed July 27, 2009. As indicated by the stamp at the top right corner of the May 3, 2009 Petition, this Petition was received in the Patent Office on March 6, 2009 and received in the Office of Petitions on March 11, 2009. As indicated by the stamp at the bottom left corner of this Petition, the maintenance fee of \$490 was paid.

On July 27, 2009, I called the Petitions Branch to check the status of the originally submitted Petition filed May 3, 2009 since it had been pending for several months. The person I spoke with indicated that the Petition was not pending and a new petition should be submitted. For this reason, the Petition dated July 27, 2009 was submitted.

For the above stated reasons, it is submitted that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. It is also submitted that this Supplemental Statement enumerates the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Therefore, Petitioner requests that the delayed payment of the maintenance fee be accepted and the patent reinstated.

If any further information is required for this Petition, please contact Jay R Beyer at 303) 499-3859.

Dated: September 21, 2009

Respectfully submitted,
/Jay R Beyer/
Jay R Beyer
Petitioner
Reg. No. **39,907**